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SERVICE DATE - MAY 19, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 399X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY– ABANDONMENT EXEMPTION–IN JEFFERSON COUNTY, NE

Decided: May 15, 2003

This decision reinstates the abandonment exemption in this proceeding.

BACKGROUND

On November 20, 2002, The Burlington Northern and Santa Fe Railway Company (BNSF) filed a verified notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 10.8-mile line of railroad between milepost 127.83, near Reynolds, and milepost 117.03, near Endicott, in Jefferson County, NE (Reynolds-Endicott line).¹ In its verified notice of exemption, BNSF had certified, pursuant to 49 CFR 1152.50(b), that no local traffic had moved over the Reynolds-Endicott line for the prior 2 years and that there was no overhead traffic to be rerouted. Notice of the exemption was served and published in the Federal Register on December 10, 2002 (67 FR 75896). The exemption was scheduled to become effective on January 9, 2003.

On December 19, 2002, the United Transportation Union (UTU) filed a Motion for a Stay of the abandonment, asserting that the Reynolds-Endicott line did not qualify for the exemption because local traffic had moved over the Reynolds-Endicott line within the last 2 years. BNSF did not respond to UTU's motion. Because BNSF had not disputed UTU's contention, the Board, through the Director of the Office of Proceedings, issued a decision on January 7, 2003 (dismissal order), dismissing the notice and discontinuing the proceeding, but giving BNSF until January 17, 2003, to demonstrate that the Reynolds-Endicott line did qualify for the exemption.²

¹ This 10.8-mile segment is part of a 222-mile BNSF line across southern Nebraska between Table Rock, NE, and Orleans, NE.

² BNSF had erred in its initial certification by stating that there was no overhead traffic to be
(continued...)

On January 14, 2003, Endicott Clay Products Co. (Endicott Clay), the only shipper that opposed the abandonment and whose facilities are located not on the Reynolds-Endicott line but a short distance beyond the eastern terminus of the proposed abandonment, filed in opposition to reinstatement. Endicott Clay argues that (1) the proposed abandonment would break the continuity of the 222-mile BNSF line across southern Nebraska, resulting in two stub-ended lines, between Table Rock, NE, and Orleans, NE, (2) there are substantial issues as to whether overhead traffic can be rerouted efficiently and economically, and (3) BNSF should be required to file an application for abandonment under 49 U.S.C. 10903.

Endicott Clay submits that it made 292 shipments by rail in 2002 and that all of its shipments were transported west over the Reynolds-Endicott line. It argues that BNSF's proposed rerouting of overhead traffic may be inefficient and uneconomical, especially for shipments destined west of Endicott, because traffic will be rerouted via Table Rock, NE, which is 67 miles east of Endicott.

On January 17, 2003, BNSF filed its response to UTU's motion for stay and Endicott Clay's opposition statement. BNSF states that the Reynolds-Endicott line handles a small amount of overhead traffic. BNSF further states that there are no customers, stations or interchange points located on the Reynolds-Endicott line and that there has been no local traffic on the Reynolds-Endicott line for at least 2 years. BNSF argues that UTU confused the terms "local traffic" and "overhead traffic." All traffic that moved was overhead traffic because it did not originate or terminate along the Reynolds-Endicott line. BNSF submits that, contrary to UTU's assertions, there was no local traffic.

BNSF maintains that Endicott Clay's rail traffic, which currently moves as overhead traffic over the Reynolds-Endicott line, can be efficiently and economically rerouted. BNSF asserts that, during 2001 and the first 11 months of 2002, 88% of Endicott Clay's rail shipments were handled by BNSF to Chicago, IL, where they were interchanged with eastern carriers that took them to eastern markets. BNSF also states that Endicott Clay's eastbound shipments currently go west to Superior, NE, south to Newton, KS, and then east to Chicago and the eastern rail connections. BNSF indicates that, following the abandonment of the Reynolds-Endicott line, Endicott Clay's shipments would travel east to Table Rock, then to Lincoln, NE, and then to Chicago to connect with eastern carriers. BNSF maintains that the abandonment will reduce the total miles by rail from Endicott to Chicago from 873 miles (through Superior) to 657 miles (through Table Rock), for a reduction of about 25% of the total

²(...continued)

rerouted away from the 10.8-mile Reynolds-Endicott line. By letter dated December 16, 2002, BNSF tried to correct this error, but it sent the correction informally to the Chief of the Section of Environmental Analysis (SEA) rather than to the Board's Secretary (49 CFR 1104.1), and, as a result, the correction did not become a part of the official record until after the dismissal order had been issued.

miles for 88% of Endicott Clay's rail traffic. This rerouting, according to BNSF, will also lead to significant savings in fuel and handling costs.

On January 22, 2003, UTU and Endicott Clay filed a Joint Request for Leave to File a Reply and a Joint Reply to the BNSF response.³ UTU and Endicott maintain that BNSF's response is incomplete and does not support the conclusion that the rerouting of overhead traffic on the Reynolds-Endicott line is more efficient and economical than the current transportation of overhead traffic. They submit that mileage alone is not the only criterion for determining the efficiency of routes. They contend that congestion at Lincoln, NE, might reduce the efficiency of routing via that terminal, and that personnel-related factors could affect the efficiency of the rerouting. They also submit that BNSF does not address the matter of Endicott Clay's westbound traffic or the efficiency of the routing for other shippers. UTU and Endicott further argue that, as in Consolidated Rail Corporation-Exemption-Abandonment of the Weirton Secondary Track in Harrison and Tuscarawas Counties, OH, Docket No. AB-167 (Sub-No. 1088X) (ICC served June 14 1989) (Weirton Abandonment), a formal abandonment application is required here for a more extensive examination of the traffic rerouting issues raised by the proposed abandonment.

A formal letter in support of the dismissal decision was filed on February 3, 2003, by Senator Jeanne M. Combs (Senator Combs), Nebraska Legislature District 32. Senator Combs expresses her concern that shippers in her district, as well as shippers in adjoining districts stand to be adversely affected if the Reynolds-Endicott line is abandoned, and she seeks at least a 6-month moratorium on the abandonment of the Reynolds-Endicott line.⁴

DISCUSSION AND CONCLUSIONS

The Board dismissed the notice of exemption and discontinued this proceeding because of UTU's allegation that local traffic had moved over the Reynolds-Endicott line. BNSF has now satisfactorily refuted that allegation, confirming that the Reynolds-Endicott line has had no local traffic for 2 years, only overhead traffic. BNSF maintains that Endicott Clay's traffic, which currently moves as overhead traffic over the Reynolds-Endicott line, can be efficiently and economically rerouted. To invoke the class exemption under 49 CFR 1152 Subpart F, BNSF was required to certify only that any overhead traffic could be rerouted over other lines. BNSF's certification—that no local traffic has

³ Under Board regulations, a reply to a reply is not permitted. 49 CFR 1104.13(c). In view of the fact that BNSF did not move to strike the request and because BNSF will not be prejudiced by its admission, we will accept the joint reply to the BNSF response.

⁴ Various other letters were received at the Board, but they were not served on BNSF. Thus, we will treat them as correspondence and place them in the public docket.

moved over the Reynolds-Endicott line for at least 2 years prior to the filing of the notice and that overhead traffic can be rerouted—qualifies this abandonment for use of the Board’s class exemption procedures.

We are not persuaded by UTU and Endicott Clay’s argument that a formal abandonment application is required so that a more extensive examination of the traffic rerouting issues can be conducted. We have held that routing decisions usually are matters of managerial discretion (see Weirton Abandonment), and it would be contrary to the economic self-interest of the carrier to adopt inefficient routings. CSX Transportation, Inc.—Abandonment Exemption—in Putnam, Hendricks, and Marion Counties, IN, Docket No. AB-55 (Sub-No. 309X) (ICC served Nov. 16, 1989). Nevertheless, in the Weirton Abandonment proceeding, the Interstate Commerce Commission (ICC) was unwilling to apply the class exemption procedures to that abandonment because substantial questions about whether the abandonment comported with the national rail transportation policy had been raised. Whether questions regarding the abandonment of a particular line segment rise to the level that warrant revocation of an exemption depends on the weight of the evidence in each case. The line to be abandoned in Weirton Abandonment was part of a 190-mile east-west mainline called the Panhandle line – an allegedly “vital piece of important east-west mainline track.” Id. at 7. The ICC noted there (id. at 8) that “[e]xtensive and legitimate concerns have been raised by numerous State and local government representatives about the importance of the Panhandle line as a through route for existing and potential overhead traffic for the area.” Local and overhead shippers also opposed the abandonment.

Here, UTU and Endicott Clay, the only shipper participating in this proceeding, have not raised such significant questions about the abandonment or shown that the rerouting is inefficient and uneconomical. The record does not indicate that the Reynolds-Endicott line is important to the broader rail network. Moreover, the record shows that the rerouting of the one complaining shipper’s traffic through Table Rock will decrease the mileage to Chicago (where 88% of Endicott Clay’s products were handled) by 25%, which BNSF claims will result in savings in fuel and handling costs. In response, UTU and Endicott Clay do not refute BNSF’s claims. Instead, they state that, if a formal abandonment application were required, they would present evidence to show that there is congestion at Lincoln that may affect rerouting efficiency and that personnel-related factors would add transit time and operating cost. In view of the unchallenged fuel and handling cost savings indicated by BNSF, we do not believe that we should require the filing of a full abandonment application based on such conjectural statements. Finally, UTU and Endicott Clay also raise the issue of westbound traffic (apparently 12% of Endicott Clay’s traffic), but do not specify what, if any, injury is involved. And, as we have noted, the carrier appears to be in the best position to assess efficiency.

Finally, BNSF requests that we reinstate its Notice of Exemption effective as if filed on November 20, 2002, BNSF’s original filing date of the verified notice of exemption. We will grant this

request. The time had already passed for filing any offers of financial assistance (OFA) and trail use/rail banking requests (December 20, 2002) and requests for public use conditions (December 30, 2002) prior to the January 7, 2003 dismissal order. Because no one had sought an OFA, trails use/rail banking or public use condition, no one will be prejudiced by granting BNSF's request. Based on BNSF's certification and the limited opposition to the abandonment, we find that BNSF's use of the exemption process is appropriate in this instance and we will not require BNSF to file a formal application under 49 U.S.C. 10903.

ENVIRONMENTAL MATTER

The Board's Section of Environmental Analysis (SEA) issued an environmental assessment (EA) in this proceeding on December 13, 2002. In the EA, SEA stated that the National Geodetic Survey (NGS) had indicated that three geodetic markers may be adversely affected by the abandonment. During the comment period, NGS advised SEA that there were eight geodetic station markers on the Reynolds-Endicott line instead of three. Based on NGS's comments, SEA recommends that BNSF notify NGS at least 90 days prior to any salvage activities that may disturb or destroy the eight geodetic station makers so that plans can be made for their relocation. The condition recommended by SEA will be imposed.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. UTU and Endicott Clay's joint request to file a reply to a reply is granted.
3. The decision served on January 7, 2003, is vacated.
4. The notice of exemption is reinstated to the original filing date of November 20, 2002.
5. The exemption of the abandonment is subject to the condition that BNSF shall notify NGS at least 90 days prior to any salvage activities that may disturb or destroy the eight geodetic station makers so that plans can be made for their relocation.

6. This decision is effective on June 8, 2003.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams
Secretary